

ESTTA Tracking number: **ESTTA642153**

Filing date: **12/02/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	CytoSport, Inc.
Granted to Date of previous extension	12/03/2014
Address	4795 Industrial Way Benicia, CA 94510 UNITED STATES
Attorney information	Sarah Nelsen 1Hormel Place Austin, MN 55912 UNITED STATES snelsen@hormel.com

Applicant Information

Application No	86049406	Publication date	08/05/2014
Opposition Filing Date	12/02/2014	Opposition Period Ends	12/03/2014
Applicant	Molly's Milk Truck, LLC 441 Grandview Terrace Leonia, NJ 07605 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2012/03/08 First Use In Commerce: 2012/05/20 All goods and services in the class are opposed, namely: Beverages made of coffee; Beverages with a coffee base; Caffeine-free coffee; Coffee; Coffee and tea; Coffee based beverages; Coffee beverages with milk; Coffee-based beverages; Coffee-based iced beverages; Iced coffee
Class 043. First Use: 2012/03/08 First Use In Commerce: 2012/05/20 All goods and services in the class are opposed, namely: Coffee bars; Food and drink catering; Food preparation; Mobile cafe services for providing food and drink; Outside catering services; Preparation of food and beverages; Restaurant and cafe services; Restaurant and catering services; Restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Serving food and drinks

Applicant Information

Application No	86048272	Publication date	08/05/2014
Opposition Filing Date	12/02/2014	Opposition Period Ends	
Applicant	Molly's Milk Truck, LLC 441 Grandview Terrace		

	Leonia, NJ 07605 UNITED STATES
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Goods/Services Affected by Opposition

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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	3815321	Application Date	02/20/2009
Registration Date	07/06/2010	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK REFUEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2009/06/29 First Use In Commerce: 2009/06/29 Protein enhanced energy drink		


U.S. Registration No.	4006712	Application Date	08/19/2009
Registration Date	08/02/2011	Foreign Priority Date	NONE
Word Mark	POWER MILK		

Design Mark	POWER MILK
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2010/02/11 First Use In Commerce: 2010/02/11 Dietary and Nutritional supplement


U.S. Registration No.	2809666	Application Date	05/22/2000
Registration Date	02/03/2004	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK		
Design Mark	MUSCLE MILK		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/10/08 First Use In Commerce: 1999/10/08 nutritional supplements		


U.S. Registration No.	3333886	Application Date	02/09/2007
Registration Date	11/13/2007	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK LIGHT		
Design Mark	MUSCLE MILK LIGHT		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2007/01/00 First Use In Commerce: 2007/01/00 Dietary and nutritional supplements		

U.S. Registration No.	3311489	Application Date	02/09/2007
Registration Date	10/16/2007	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK N' OATS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/01/00 First Use In Commerce: 2006/01/00 Dietary and nutritional supplement Class 030. First use: First Use: 2006/01/00 First Use In Commerce: 2006/01/00 Fortified food, namely, protein based, nutrient-dense oatmeal		


U.S. Registration No.	4533863	Application Date	10/04/2010
Registration Date	05/20/2014	Foreign Priority Date	NONE
Word Mark	CYTOSPORT MONSTER MILK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2010/11/01 First Use In Commerce: 2010/11/01 Ready to drink protein drinks containing milk derived ingredients for use as dietary and nutritional supplements, excluding energy drinks		

U.S. Registration No.	3132139	Application Date	02/24/2005
Registration Date	08/22/2006	Foreign Priority Date	NONE
Word Mark	MIGHTY MILK		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2004/12/00 First Use In Commerce: 2005/07/00 DIETARY AND NUTRITIONAL SUPPLEMENTS

U.S. Registration No.	3886569	Application Date	02/09/2007
Registration Date	12/07/2010	Foreign Priority Date	NONE
Word Mark	MIGHTY MILK BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2010/10/14 First Use In Commerce: 2010/10/14 Dietary and nutritional supplement Class 029. First use: First Use: 2010/10/14 First Use In Commerce: 2010/10/14 Fortified food, namely, protein based, nutrient-dense snack bars		

U.S. Registration No.	3971667	Application Date	06/05/2005
Registration Date	05/31/2011	Foreign Priority Date	NONE
Word Mark	MONSTER MILK		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2008/07/00 First Use In Commerce: 2008/07/00 Dietary and nutritional supplements, excluding ready to drink beverages

U.S. Registration No.	2973352	Application Date	05/27/2003
Registration Date	07/19/2005	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2001/10/01 First Use In Commerce: 2001/10/01 Meal replacement drinks; meal replacement and dietary supplement drink mixes; protein based, nutrient-dense meal replacement bars; and pre-mixed nutritionally fortified beverages Class 029. First use: First Use: 2001/10/01 First Use In Commerce: 2001/10/01 Protein based, nutrient-dense snack bars		


U.S. Registration No.	2714802	Application Date	01/13/1999
Registration Date	05/13/2003	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1998/06/01 First Use In Commerce: 1998/06/01 Powdered nutritional supplement containing milk derived ingredients for adding to food or drink		


U.S. Application No.	77936832	Application Date	02/16/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POWER MILK		

Design Mark	POWER MILK
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 Meal replacement drinks; dietary and nutritional supplement drinks; protein supplement drinks; protein drinks for use as a meal replacement; and pre-mixed nutritionally fortified beverages; all the foregoing containing milk-derived ingredients


U.S. Application No.	85219931	Application Date	01/18/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK PROTEIN		
Design Mark	MUSCLE MILK PROTEIN		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 Protein fortified nutritional supplements containing milk derived ingredients; Protein fortified dietary supplements containing milk derived ingredients; Protein fortified meal replacement drinks containing milk derived ingredients; Protein fortified and nutritionally fortified beverages containing milk derived ingredients; protein fortified and nutritionally fortified snack bars containing milk derived ingredients; protein fortified and nutritionally fortified meal replacement bars containing milk derived ingredients; protein fortified meal replacement and dietary supplement drink mixes containing milk derived ingredients		

U.S. Application No.	85120997	Application Date	09/01/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK CONTAINS NO MILK		

Design Mark	
Description of Mark	The mark consists of the word "MUSCLE" in block letters underneath is the word "MILK" in block letters and underneath milk is the phrase "CONTAINS NO MILK".
Goods/Services	Class 005. First use: First Use: 2009/06/01 First Use In Commerce: 2009/06/01 Nutritional supplements; Dietary supplements; Meal replacements drinks; nutritionally fortified beverages; Ready-to-drink, nutritionally fortified beverages; all of the forgoing being goods that do not contain milk

U.S. Application No.	85120039	Application Date	08/31/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK CONTAINS NO MILK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2009/06/01 First Use In Commerce: 2009/06/01 Nutritional supplements; Dietary supplements; Meal replacements drinks; nutritionally fortified beverages; Ready-to-drink, nutritionally fortified beverages; all of the foregoing being goods that do not contain milk		

U.S. Application No.	85094686	Application Date	07/28/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MUSCLE MILK ACTIVE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 Nutritional supplements; dietary supplements; meal replacement drinks; nutritionally fortified beverages; nutritionally fortified snack bars; nutritionally fortified meal replacement bars; meal replacement and dietary supplemental drink mixes; all of the foregoing containing ingredients derived from milk

Attachments	77674563#TMSN.png(bytes) 77808255#TMSN.png(bytes) 76053632#TMSN.png(bytes) 77103674#TMSN.png(bytes) 77103685#TMSN.png(bytes) 85144460#TMSN.png(bytes) 78574711#TMSN.png(bytes) 77103656#TMSN.png(bytes) 78643905#TMSN.png(bytes) 77936832#TMSN.png(bytes) 85219931#TMSN.png(bytes) 85120997#TMSN.png(bytes) 85120039#TMSN.png(bytes) 85094686#TMSN.png(bytes) MollysMilkTruck(word)_docx.pdf(50877 bytes) Mollysmilktruck(design)_docx.pdf(50960 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/sln/
Name	Sarah Nelsen
Date	12/02/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NOTICE OF OPPOSITION

In re Application Serial No.: 86/048,272
For the Mark: Mollys Milk Truck
Filed: August 26, 2013
Publication in the Trademark
Official Gazette On: August 5, 2014

Cytosport, Inc.)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	
)	
Molly's Milk Truck, LLC)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Cytosport, Inc., a corporation existing under the laws of the State of California ("Opposer"), believes it will be damaged by the registration of the MOLLYS MILK TRUCK mark in International Class 30 and 43 and hereby opposes the same.

The grounds for this opposition are as follows:

1. Applicant Molly's Milk Truck, LLC ("Applicant") seeks to obtain registration on the principal register of the trademark MOLLYS MILK TRUCK for "beverages made of coffee base; Caffeine-free coffee; Coffee; Coffee and tea; Coffee based beverages; Coffee beverages with milk; Coffee-based beverages; Coffee based iced beverages; Iced coffee" in International Class 30; and "Coffee bars; Food and drink catering; Food preparation; Mobile café services for providing food and drink; Outside catering services; Preparation of food and beverages; Restaurant and cafe services; Restaurant and catering services; Restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Serving food and drinks" in International Class 43. The application, filed August 26, 2013, is a use application pursuant to the U.S. Trademark Act, 15 U.S.C. § 1051(a)(1) with a claimed first use in commerce of May 20, 2012.

2. Upon information and belief, Applicant is a New Jersey limited liability company with its principal place of business at 441 Grandview Terrace, Leonia, New Jersey, 07605.

3. Opposer is a California corporation with its principal place of business at 4795 Industrial Way, Benicia, California 94510.

4. Opposer is in the business of manufacturing and marketing nutritional and dietary supplement products. Among the products offered by Cytosport is a family of nutritional supplements, powder mixes and ready to drink nutritional drinks.

5. Opposer's powdered and ready to drink nutritional supplement products are sold under a variety of trademarks, including but not limited to MUSCLE MILK, MUSCLE MILK LIGHT and MONSTER MILK. Opposer has built a family of brands and trademarks

that have the common term “milk” which has become a distinctive and recognizable component of the Opposer’s family of marks (“Milk Family of Marks”).

6. Opposer has been using numerous of the above referenced marks in commerce for many years. For example, Opposer’s MUSCLE MILK mark has been used in commerce since at least as early as June of 1998.

7. Opposer is the owner of several United States federal trademark registrations associated with its family of trademarks including the following:

Mark	Reg Number	Goods
Muscle Milk Refuel	3,815,321	Protein enhanced energy drink
Power Milk	4,006,712	Dietary and nutritional supplement
Muscle Milk	2, 809,666	Nutritional supplements
Muscle Milk Light	3,333,886	Dietary and nutritional supplements
Muscle Milk N’ Oats	3,311,489	Dietary and nutritional supplements; fortified foods, namely, protein based, nutrient dense oatmeal
Cytosport Monster Milk	4,533,863	Ready to drink protein drinks containing milk derived ingredients for use as dietary and nutritional supplements excluding energy drinks
Mighty Milk	3, 132, 139	Dietary and nutritional supplements
Mighty Milk Bar	3,886,569	Dietary and nutritional supplement, fortified food, namely protein based, nutrient dense snack bars
Monster Milk	3,971,667	Dietary and nutritional supplements, excluding ready to drink beverages
Muscle Milk	2,973,352	Meal replacement drinks, meal replacement and dietary supplement drink mixes, protein based, nutrient dense meal replacement bars; and pre-mixed nutritionally fortified beverages
Muscle Milk	2,714,802	Powdered nutritional supplement containing milk derived ingredients for adding to food or drink

8. Opposer is also the owner of numerous pending applications for federal trademark registrations including but not limited to the following:

Mark	Application Number	Goods
Power Milk	77/936832	Meals replacement drinks, dietary and nutritional supplement drinks, protein drinks for use as a meal replacement and premixed nutritionally fortified beverages,

		all the foregoing containing milk-derived ingredients
Muscle Milk Protein	85/219931	Protein fortified nutritional supplements containing milk derived ingredients, protein fortified dietary supplements containing milk derived ingredients; protein fortified meal replacement drinks containing milk derived ingredients...
Muscle Milk Contains No Milk (design)	85/120997	Nutritional supplements, dietary supplements, meal replacement drinks, nutritionally fortified beverages, ready to drink, nutritionally fortified beverages, all of the foregoing being goods that do not contain milk
Muscle Milk Contains no Milk	85/120039	Nutritional supplements, dietary supplements, meal replacement drinks, nutritionally fortified beverages, ready to drink, nutritionally fortified beverages all of the foregoing being goods that do not contain milk
Muscle Milk Active	85/094686	Nutritional supplements, dietary supplements, meal replacement drinks, nutritionally fortified beverages, nutritionally fortified snack bars, nutritionally fortified meal replacement bars, meal replacement and dietary supplemental drink mixes, all of the foregoing containing ingredients derived from milk

9. Opposer's Milk Family of Marks are distinctive. Moreover, through its use in interstate commerce, including substantial advertising and promotion, Opposer has developed valuable goodwill. Opposer's Milk Family of Mark have trademark significance to purchasers and potential purchasers.

10. Opposer's rights in Opposer's Milk Family of Marks are prior to the date of Applicant's application and any use of MOLLYS MILK TRUCK by Applicant.

11. Due in primary part to the resemblance of Applicant's MOLLYS MILK TRUCK mark to Opposer's Milk Family of Marks and the similar nature of the goods and services of the respective parties, customers and potential customers are likely to believe

that Applicant's goods under Applicant's mark originate from or are sponsored by or affiliated or connected with Opposer or Opposer's products, resulting in a likelihood of confusion in the marketplace and damage to Opposer.

12. Registration of the mark MOLLYS MILK TRUCK by Applicant is likely to cause confusion, mistake, or deception, causing damage to Opposer under Section 13 of the U.S. Trademark Act, 15 U.S.C. § 1063. The mark in the subject application cannot be registered consistent with Section 2(d) of the U.S. Trademark Act, 15 U.S.C. §1052(d).

13. MUSCLE MILK is a famous trademark.

14. Registration of Applicant's MOLLYS MILK TRUCK mark is likely to dilute Opposer's Milk Family of Marks, or individual members thereof.

WHEREFORE, Opposer asks that the opposition to this application be sustained and that the registration of the term MOLLYS MILK TRUCK be refused.

Respectfully submitted,

/sln/

Sarah L. Nelsen
Cytosport, Inc.

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Opposition was served upon the Applicant, Molly's Milk Truck, LLC , at 441 Grandview Terrace, Leonia, NJ 07605 by United States Mail First Class, Postage Pre-paid.

Dated this 2nd day of December, 2014.

/RLC/

Rebecca L. Condit

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NOTICE OF OPPOSITION

In re Application Serial No.: 86/049,406
For the Mark: Mollys Milk Truck (design)
Filed: August 27, 2013
Publication in the Trademark
Official Gazette On: August 5, 2014

Cytosport, Inc.)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	
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Molly's Milk Truck, LLC)	
)	
Applicant.)	

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Cytosport, Inc., a corporation existing under the laws of the State of California ("Opposer"), believes it will be damaged by the registration of the MOLLYS MILK TRUCK(design) mark in International Class 30 and 43 and hereby opposes the same.

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10. Opposer's rights in Opposer's Milk Family of Marks are prior to the date of Applicant's application and any use of MOLLYS MILK TRUCK (design) by Applicant.

11. Due in primary part to the resemblance of Applicant's MOLLYS MILK TRUCK (design) mark to Opposer's Milk Family of Marks and the similar nature of the goods and services of the respective parties, customers and potential customers are likely to

believe that Applicant's goods under Applicant's mark originate from or are sponsored by or affiliated or connected with Opposer or Opposer's products, resulting in a likelihood of confusion in the marketplace and damage to Opposer.

12. Registration of the mark MOLLYS MILK TRUCK (design) by Applicant is likely to cause confusion, mistake, or deception, causing damage to Opposer under Section 13 of the U.S. Trademark Act, 15 U.S.C. § 1063. The mark in the subject application cannot be registered consistent with Section 2(d) of the U.S. Trademark Act, 15 U.S.C. §1052(d).

13. MUSCLE MILK is a famous trademark.

14. Registration of Applicant's MOLLYS MILK TRUCK (design) mark is likely to dilute Opposer's Milk Family of Marks, or individual members thereof.

WHEREFORE, Opposer asks that the opposition to this application be sustained and that the registration of the term MOLLYS MILK TRUCK (design) be refused.

Respectfully submitted,

/sln/

Sarah L. Nelsen
Cytosport, Inc.

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Dated this 2nd day of December, 2014.

/RLC/

Rebecca L. Condit